

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS Nos.5764/1998 to FIRST APPEAL 5766/1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and Sd/-

MR.JUSTICE R.P.DHOLAKIA Sd/-

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

 2. To be referred to the Reporter or not? : NO

 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

 5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 - No

AMBALAL VARNASHIDAS

Versus

EXECUTIVE ENGINEER

Appearance:

MR SANJAY M AMIN for appellants

MR DN PATEL I/C PP for respondent No.1 & 2 in FA

No. 5764/1998

MR HL JANI, APP for respondent Nos.1 & 2 in FA

Nos. 5765/98 and 5766/98

CORAM : MR.JUSTICE J.M.PANCHAL and

MR. JUSTICE R.P.DHOLAKIA

Date of decision: 08/07/1999

COMMON ORAL JUDGEMENT

(Per: J.M.Panchal, J.)

By means of filing these appeals under sec.54 of the Land Acquisition Act, 1984 read with sec.96 of the Code of Civil Procedure, 1908, the appellants who are original claimants pray that they should be awarded more compensation than Rs.40/- per sq.mtr. awarded by the learned Assistant Judge, Mehsana vide judgment and award dated November 28, 1997 rendered in Land Acquisition References Nos.774/90, 777/90 and 778/90.

.RS 2

#. A proposal was sent by the Executive Engineer, Narmada Yojana Main Canal Construction Division, Ahmedabad to the State Government to acquire agricultural lands of Village Jaspur, Taluka Kalol, District Mehsana. On scrutiny of the said proposal, the State Government was satisfied that agricultural lands of Village Jaspur were likely to be needed for the said public purpose. Accordingly, notification under sec.4(1) of the Land Acquisition Act, 1894 ('the Act' for short) was issued which was published in Government gazette on December 3, 1985. The land owners whose lands were proposed to be acquired were served with notices and they had filed their objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer, Narmada Yojana, Ahmedabad, had forwarded his report to the State Government as contemplated by sec.5(A)(2) of the Act. On consideration of the said report, the State Government was satisfied that agricultural lands of Village Jaspur which were specified in the notification published under sec.4(1) of the Act were needed for public purpose of Narmada Yojana. Therefore, declaration under sec.6 of the Act was made which was published in Government gazette dated May 26, 1987. The interested persons were thereafter served with the notice for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.150/- per sq.mtr. However, having regard to the material placed before him, the Land Acquisition Officer by his award dated May 17, 1989 offered compensation to the claimants at the rate of Rs.3/- per sq.mtr. The claimants were of the opinion that the offer of compensation made by the Land Acquisition Officer was inadequate. Therefore, they made applications in writing requiring the Special Land Acquisition Officer to refer the matters to the Court for the purpose of determination of appropriate compensation. Accordingly, references were made to the District Court, Mehsana which were numbered as Land Acquisition Reference

Cases Nos.774/90, 777/90 and 778/90. In the reference applications, it was pleaded by the claimants that their lands which were acquired were highly fertile and having regard to the over all development which had taken place near the acquired lands, they should be paid compensation at the rate of Rs.150/- per sq.mtr.

#. The reference applications were contested by the respondents vide written statement at exh.6. In the written statement, it was claimed that the determination of compensation by the Special Land Acquisition Officer was just, fair as well as adequate and, therefore, the reference applications should be dismissed. It was also pleaded therein that the claimants were not entitled to any additional amount of compensation as the Land Acquisition Officer had taken into consideration the use of the lands acquired, their potentiality, fertility, facilities available, size of the lands, etc. By filing written statement, the respondents demanded dismissal of the reference applications.

#. Upon rival assertions of the parties, necessary issues for determination were raised by the reference court at exh.7. On behalf of the claimants, witness Chimanlal Shambudas Patel was examined at exh.12. The said witness gave particulars about the lands acquired and also mentioned about the development which had taken place in the nearby areas. The witness claimed that Kalol town was at a distance of 7 kms. from Jaspur whereas boundary of Gandhinagar was at a distance of 9 kms. from Jaspur. According to the witness, Unava was at a distance of 10 kms. whereas IFFCO factory was at a distance of 3 kms. from Village Jaspur. The witness asserted in his evidence that Kodiyar Railway Station was at a distance of 3 kms. and Gandhinagar-Sarkhej Highway was also at a distance of 3 kms. from his village. The witness deposed before the Court that new Gujarat High Court building, Bhagvat Vidhyapith, Nirma Foundation Engineering College and Gurukul were in the vicinity of Village Jaspur. The witness further claimed before the Court that the boundaries of Village Jaspur and Village Vadsar were common and Village Saij was at a distance of 3 kms. from Village Jaspur. Though the witness claimed that the claimants were able to take 3 crops in a year and were earning Rs.40,000/- per year by way of sale of agricultural produces, he could not substantiate his claim by production of documentary evidence. The witness produced previous awards of the reference court at exhs.11 and 12. Exh.11 indicated that the agricultural lands of Village Jaspur were acquired for public purpose

of Narmada Yojana pursuant to publication of initial notification under sec.4(1) of the Act on December 3, 1985. Therein, the Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.3/- per sq.mtr, but in Land Acquisition Reference Cases Nos.775/90 to 783/90, 468/91, 469/91, 360/92 to 367/92, the reference court by award dated June 23, 1997 had enhanced compensation to Rs.72/- per sq.mtr. Exh.16 indicated that the lands of Village Jaspur were acquired for public purpose of Narmada Yojana pursuant to publication of initial notification under sec.4(1) of the Act on December 3, 1985. Therein also, the Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.3/- per sq.mtr., but the same was enhanced to Rs.72/- per sq.mtr. by the reference court in Land Acquisition Reference Cases Nos.758/90 to 764/90, 768/90 to 771/90, 463/91, 465/91, 466/91 and 1808/96 vide judgment and award dated June 23, 1997.

#. No evidence was led by the respondents in support of the averments made in the written statement.

#. On appreciation of evidence led by the claimants, the reference court held that though the lands covered by award exh.16 and lands in the present case were acquired under different notifications of the same date, exh.16 was not comparable as previous awards which were produced in that case at exhs.40,41,42 and mark 50/1 and relied upon did not relate to the lands similarly situated. The reference court further deduced that the claimants were entitled to compensation at the rate of Rs.40/- per sq.mtr. by the impugned common award which has given rise to the present appeals.

#. Mr.Nitin M. Amin, learned counsel for the appellants submitted that common award rendered by the reference court in Land Acquisition Reference Cases Nos.758/90 to 771/90, 463/91, 465/91, 466/91 and 1808/96 produced in this case at exh.11 was challenged by the State Government in First Appeal Nos.315/98 to First Appeal No.328/98 and as the High Court by judgment dated June 28, 1999 has held that the claimants in those cases were entitled to compensation at the rate of Rs.52/- per sq.mtr., the present claimants should also be awarded compensation at the rate of Rs.52/- per sq.mtr. Again it was emphasized on behalf of the appellants that common award dated June 23, 1997 rendered by the reference Court in Land Acquisition Reference Cases Nos.775/90, 779/90 to 783/90, 468/90, 469/91, 360/92 and 363/92 to 367/92 produced in this case at exh.16 was challenged by the State Government in First Appeals Nos.300/98 to 314/98

and as the High Court by judgment dated June 28, 1999 has held that the claimants in those cases were entitled to compensation at the rate of Rs.52/- per sq.mtr., the present appellants should also be awarded compensation at the same rate.

#. Mr.D.N.Patel, learned In-charge Government Pleader assisted by Mr.H.L.Jani, learned Asstt. Government Pleader submitted that cogent reasons are given by the reference court as to why previous awards which are sought to be relied upon by the claimants are comparable and, therefore, the impugned award should be upheld by the Court.

#. Heard learned counsel for the parties. In the present case, the claimants had produced previous awards of the court at exhs.11 and 16. Exh.11 is in respect of lands of this very village. Therein, the lands were acquired pursuant to publication of notification under sec.4(1) of the Act on December 3, 1985. The Land Acquisition Officer had awarded compensation to the claimants at the rate of Rs.3/- per sq.mtr. and the reference court by award dated June 23, 1997 had enhanced the same to Rs.72/- per sq.mtr. This award was subject matter of challenge in First Appeals Nos.300/98 to 314/98 and the High Court by judgment dated June 28, 1999 has held that the claimants in those cases were entitled to compensation at the rate of Rs.52/- per sq.mtr. Again, exh.16 which is also in respect of lands of village Jaspur was subject matter of challenge in the High Court in First Appeals Nos.315/98 to 328/98 and the High Court by judgment dated June 28, 1999 has held that the claimants in those cases were entitled to compensation at the rate of Rs.52/- per sq.mtr. It is relevant to note that the High Court had determined compensation payable to the claimants as on December 3, 1985 and January 2, 1986 which were the dates of publication of initial notification under sec.4(1) of the Act. In this case also, notification under sec.4(1) of the Act was published on December 3, 1985. It has not been pointed out by the learned counsel for the respondents as to why the judgment of the High Court rendered in above numbered first appeals would not be applicable to the facts of the present case. It is also not brought to the notice of the court that lands which were subject matter of previous awards were not similar to the lands acquired from the same village in the present case or that the lands acquired in the present case from Village Jaspur were inferior in quality to the lands previously acquired from the same village. It is well settled that previous award or judgment of the reference court or High Court in

respect of lands of same village can be relied upon for the purpose of determining market value of the lands acquired from the same village. The judgment of High Court rendered in respect of lands of village Jaspur is not only relevant but also furnishes good guide. Therefore, it can be made basis for determining market value of lands acquired in the present case. In view of the judgment rendered in above numbered first appeals, we are of the opinion that the claimants in the present cases are also entitled to compensation at the rate of Rs.52/-per sq.mtr.

##. For the foregoing reasons, the appeals partly succeed. It is held that the appellants will be entitled to compensation at the rate of Rs.52/- per sq.mtr. It is clarified that the appellants shall not be entitled to interest on solatium as well as interest on additional amount of compensation found payable under sec.23(1A) of the Act. Rest of the directions given in the impugned award are hereby upheld. There shall be no orders as to costs. Office is directed to draw decree in terms of this judgment.

(J.M.PANCHAL,J.)

(R.P.DHOLAKIA,J.)
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